



**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**

**CMPMO No. 221 of 2019**  
**Reserved on 26.02.2026**  
**Date of decision : 05.03.2026**

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Deepa Kumari ...Petitioner.

Versus

Narain Dass & others .....Respondents.

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*Coram*

***Hon'ble Mr. Justice Romesh Verma, Judge.***

*Whether approved for reporting?<sup>1</sup>*

For the petitioner: Mr. Virbahadur Verma, Advocate.

For the respondent: Mr. G.R.Palsra, Advocate.

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**Romesh Verma, Judge**

The present petition arises out of the order passed by learned Additional District Judge(1), Mandi, H.P. in CMA No. 16 of 2018, titled Narain Dass & others vs. Deepa Kumari, decided on 29.11.2018, whereby the appeal preferred by the present respondents was allowed and order passed by the learned Civil Judge (Junior Division), Court No.4, Mandi, H.P., was reversed, whereby the learned Trial Court had found the present respondents guilty of committing an offence punishable under Order 39 Rule 2-A of the Code of Civil Procedure (CPC).

2. Briefs facts of the case are that the petitioner had approached the learned Trial Court by filing a suit for possession

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<sup>1</sup> Whether reporters of Local Papers may be allowed to see the judgment?



and permanent injunction, along with an application under Order 39, Rules 1 and 2 CPC for the grant of an interim injunction. The learned Trial Court, vide order dated 06.06.2006, directed the parties to maintain status quo, qua the nature and possession of the suit land comprised in Khewat No. 49 min/46, Khatauni No. 57, bearing khasra No. 414, measuring 00-10-14 bighas situated in Muhal Sakssal/80, Illaqua Tungal, Sub Tehsil Kotli, District Mandi, H.P. till filing of the reply. Subsequently, vide order dated 26.09.2006, learned Civil Judge (Jr. Div.), Court No.4, Mandi, H.P. allowed the application under Order 39 Rules 1& 2 CPC filed by the present petitioner, whereby the present petitioner was held entitled for ad-interim injunction and the present respondents were restrained from raising any construction, digging the suit land in any manner or creating any obstruction in the peaceful use of the path till the final disposal of the main suit.

3. Thereafter, the present petitioner preferred a petition under Order 39 Rule 2-A of Code of Civil Procedure for Contempt of Court by filing an appropriate petition on 04.03.2009. It was stated that the respondents in connivance with the each other and despite having knowledge of the stay order started digging the land with the intention to encroach upon a portion of the suit land by raising pillars therein and till date



they are continuing the said work and they are bent upon to violate the lawful orders passed by the Court. It was alleged that the present respondents even on 25.05.2008 dismantled the Danga raised by the present petitioner in order to protect the fencing and in this regard FIR No. 265 dated 02.06.2008 was got registered at Police Station Sadar, District Mandi, H.P. Therefore, it was prayed that the respondents may be held liable for committing contempt of Court act by sending them to civil imprisonment for violation of the stay order passed by the Court.

4. The petition was filed by Smt. Deepa Kumari through her GPA holder Bhikham Ram, S/O Chimana Ram being her father-in-law.

5. The present respondents filed comprehensive reply to the contempt petition. All the allegations as levelled in the petition were refuted and it was stated that the present petitioner is a habitual litigant and she has instituted multifarious litigation at the behest of her husband without any justification.

6. The averments as made in the petition filed under Order 39 Rule 2-A CPC were specifically denied. It was stated that the respondents neither indulged in any wrongful activity before the institution of the suit nor after passing of the interim injunction. It was stated that they have due regard and respect



to the lawful authority of the Hon'ble Court and also to the orders passed by the Court. Respondents neither flouted nor disobeyed the orders of injunction. The allegations with regard to dismantling of the Danga were specifically denied. The sum and substance of the reply is that all the allegations as levelled in the petition were refuted.

7. The rejoinder was filed by the present petitioner to the reply filed by the respondents to the petition under Order 39 Rule 2-A of CPC and all the averments as made in the petition were reiterated.

8. Initially, the contempt petition was dismissed by the learned Trial Court, however, on challenging the said order the appeal was allowed by the Appellate Court and the case was remanded back to the learned Trial Court to decide the same afresh on merits. The learned Civil Judge (Junior Division), Court No.4, Mandi, H.P. vide its order dated 17.07.2018 allowed the petition and found the respondents to have committed the contempt by violating the Court orders in flagrant violation of the Court orders. By allowing the petition it was ordered that property of the respondents be attached.

9. The learned Civil Judge (Junior Division), Court No.4, Mandi, H.P. passed the order on 17.07.2018. Against the said order, the present respondents preferred an appeal under Order



43 Rule 1 of CPC in the Court of learned Additional District & Sessions Judge-1, Mandi, H.P. on 19.09.2018.

10. Learned Additional District Judge-1, Mandi, H.P. accepted the appeal on 29.11.2018 preferred by the present respondents and the petition filed by the present petitioner under Order 39 Rule 2-A of CPC was ordered to be dismissed.

11. Still feeling aggrieved by the judgment as passed by the learned Additional District Judge, the applicant/petitioner has preferred the present petition under Article 227 of the Constitution of India.

12. It is contended by learned Counsel Mr. Virbahadur Verma, Advocate for the petitioner that the impugned judgment as passed by the learned Additional District Judge-1, Mandi, H.P. has been passed without appreciating the real point of controversy and same is contrary to settled principles of law. It has further been submitted that the petitioner had specifically pleaded and proved by leading cogent and authentic evidence to show and demonstrate that the respondents have violated the Court orders dated 06.06.2006 and 26.09.2006 passed by learned Trial Court.

13. On the other hand, learned counsel for the respondent Mr. G.R.Palsra, Advocate has defended the judgment as passed by the learned Additional District Judge-I,



Mandi, H.P. by submitting that the learned Trial Court had erred by allowing the application filed by the present petitioner under Order 39 Rule 2-A of CPC and the said error has been rightly rectified by the learned First Appellate Court. He further submits that the petitioner has failed to make out the case especially under the provisions of Order 39 Rule 2-A CPC. Therefore, the appeal preferred by the present respondents have rightly been accepted and the petition filed under Order 39 Rule 2-A of CPC has rightly been rejected.

14. I have heard learned counsel for the parties at length and have perused the record.

15. The applicant in order to substantiate its case examined Sh. Parma Nand as AW-1. He has stated that on 01.03.2009 he was called by Bhikham Ram on the spot and on the spot Sh. Narayan Dass and his family members were digging the land of the applicant Bhikham Ram. When Bhikham Ram, the father-in-law of the petitioner had raised objection and asked them to stop the construction work, the present respondents told them that they do not care for the Court orders.

16. In the cross-examination, he has admitted that on 01.03.2009 no Revenue Officer was present on the spot. He further admitted that he does not know the boundaries of the respective parties. He further admitted that he cannot tell that on



which khasra number the respondents were raising construction. He admitted that respondent Narain Dass had contested election against him.

17. The petitioner examined AW-3 Amar Singh who deposed that on 31.07.2009, he was posted as Field Kanungo in Sub Tehsil Kotli, Mandi, District Mandi, H.P. and on the order of the Tehsildar he went on the spot on 19.06.2008 and 23.06.2008. He was directed to carry out the demarcation of the suit land i.e. Khasra No. 414.

18. On 19.06.2008, demarcation could not be concluded, therefore, they had to visit the spot again on 23.06.2008. He prepared the copy of tatima Ext. AW-3/A.

19. In the cross-examination, AW-3 admitted that he did not record the statements of the parties while conducting the demarcation. He admitted that there is a boundary dispute between the parties qua the Khasra Nos. 413 and 414. In his report Ext. AW-3/B he has given the dimensions and description of the suit land. He has further admitted that the suit land is adjoining to Khasra No. 399 which is owned by the State Government. He admitted that in case private land is adjacent to the government land, in that event, it is only the Naib Tehsildar, who is competent to demarcate the suit land.



20. AW-3 Surender Data (wrongly numbered as AW3) has submitted in his deposition that on 25.05.2008 at 9:30 when he was heading towards his shop the present respondents were quarreling with the petitioner. Thereafter, he went to his shop and in the evening when he came back the stones of the retaining walls were missing from the spot.

21. In his cross-examination he has admitted that he is residing about 3-4 k.m. away from the suit land. He has admitted that he is having litigation with respondent No.1 and a civil litigation is going on between them. He has further submitted that in the said suit, he had cited Bhikham Ram, the GPA, as one of his witnesses. The general power of attorney of the petitioner Bhikham Ram entered in the witness box as AW-5 and he has reiterated the contents of the application.

22. In the cross-examination, he has admitted that he cannot produce any evidence in order to show that the retaining wall was dismantled by the present respondents.

23. In order to rebut the evidence of the petitioner, Sh. Nairain Dass respondent entered in the witness box as RW-1 and he has refuted all the allegations and stated that he had not violated the Court orders dated 06.06.2006 and 26.09.2006 in any manner.



24. From perusal of the record, it reveals that the parties are in multifarious litigation as has been admitted by the witnesses of the respective parties. Primarily, there is a boundary dispute between the petitioner and respondents and it is in this background that the suit was also filed by the plaintiff/ present petitioner against the respondents. The learned First Appellate Court has disbelieved the case of the present petitioner by analyzing the evidence on record. Learned First Appellate Court rightly came to the conclusion that the petitioner has failed to make out the case that the respondents have violated the Court orders dated 06.06.2006 dated 26.09.2006. The witnesses who have been examined by the petitioner in order to support her contention do not prove her case. AW-1 Sh. Parmanand has admitted in his deposition that Narain Dass had contested election against him which shows that the parties are inimical to each other and they have no good relations with each other and on that account he has deposed against the respondents. Statement of AW-3 Amar Singh reveals that demarcation which was carried out by him has not been conducted in conformity with the instructions of the Financial Commissioner (Revenue) State of HP. He has admitted that the permanent points were not fixed on the spot and that the suit land was adjacent to the government land. He has admitted that in the case where private



land is adjoining to the government land, in that event, it is only Naib Tehsildar who is competent to demarcate the land in question. The testimony of AW-3 demolishes the case of the petitioner. In order to prove the defiance or violation of the Court orders, AW-3 Amar Singh was the material witness but he has stated contrary and has admitted that the demarcation report is in conflict to the instructions of the Financial Commissioner. Therefore, no reliance can be placed upon AW-3/A and AW-3/B. AW-3 Surender Dutta (wrongly numbered as AW-3) has also deposed that he is in litigation with the respondent No.1. This also shows that he is interested witness, therefore, his testimony cannot be believed. AW-5 is the statement of Bhikham Ram, the father-in-law, being GPA of the petitioner. He has admitted in his cross-examination that he has not produced any record or evidence in order to corroborate that the respondents had dismantled the retaining wall.

25. From the perusal of the evidence as placed on record by the respective parties, it emanates that petitioner has failed to prove and establish that the respondents have violated the Court Orders dated 06.06.2006 and 26.09.2006. The Field Kanungo has admitted that the demarcation is not in conformity with law and the other witnesses seem to be interested witnesses. No other material including photographs have been



placed on record to show in support of their case that the said orders passed by learned Trial Court were violated by the respondents.

26. This Court is of the opinion that the provisions of Order 39 Rule 2-A of CPC are penal in nature and it requires strict proof on behalf of the party, who alleges the same. It is a basic principle that a person who alleges violation of Court orders, he has to prove the same, but in the case in hand, the petitioner has failed to establish her case to that extent.

27. The Hon'ble Apex Court, in case titled as ***U.C. SURENDRANATH vs. MAMBALLY'S BAKERY 2019 (20) SCC 666***, has held as follows :-

*"7. For finding a person guilty of willful disobedience of the order under XXXIX Rule 2A C.P.C. there has to be not mere "disobedience" but it should be a "willful disobedience". The allegation of willful disobedience being in the nature of criminal liability, the same has to be proved to the satisfaction of the court that the disobedience was not mere "disobedience" but a "willful disobedience". As pointed out earlier, during the second visit of the Commissioner to the appellant's shop, tea cakes and masala cakes were being sold 4 without any wrappers/labels. The only thing which the Commissioner has noted is that "non removal of the hoarding" displayed in front of the appellant's shop for which the appellant has offered an explanation which, in our considered view, is acceptable one."*



28. To the similar extent is the judgment passed by this Court in case titled **Raj Kumar Verma vs. Smt. Shivani Verma** Latest HLJ 2009 (1) 330 , whereby it has been held as follows:-

*“5. I have perused the record of the trial court in respect of CMA No.105/6 of 2004/2002. The respondents have denied having defied the impugned orders Legally, in case of the defiance of orders or contempt, the onus to prove is heavily laid on the petitioner. It is required to be proved beyond doubt like a criminal case Further it is also equally settled that the evidence/documents of one case cannot be gone into the other case. Thus in the instant case, the petitioner, has to stand at his own legs and is legally bound to prove the issuance of orders breached, its service or knowledge to the respondents and finally, its defiance in order to bring home the guilt of the respondents under Order 39 Rule 2-A of the CPC.”*

29. The exposition of law as laid down by the Hon'ble Apex Court and this Court clearly lays down that in order to hold a person guilty of willful disobedience of the order under Order 39 Rule 2-A there has to be not mere “disobedience” but it should be “willful disobedience”.

30. The allegations of willful disobedience being in the nature of criminal liability, the same has to be proved to the satisfaction of the Court that the disobedience was not a mere disobedience but a willful disobedience. In the present case, the parameters as laid down by the Hon'ble Apex Court and this Court are not met out, therefore, the learned First Appellate



Court has rightly allowed the appeal preferred by the present respondents and has set-aside the order as passed by the learned Trial Court.

31. The First Appellate Court has appreciated the oral as well as documentary evidence placed on record in detail which does not call for any interference.

32. The Hon'ble Apex Court in *M/S GARMENT CRAFT Vs. PRAKASH CHAND GOEL, (2022) 4 SCC 181*, decided on 11.01.2024, has held that High Court while exercising Supervisory Jurisdiction will not act as a Court of First Appeal to reappreciate, reweigh the evidence on facts upon which the determination under challenge is based. The Hon'ble Supreme Court has held as follows:-

*15. Having heard the counsel for the parties, we are clearly of the view that the impugned order is contrary to law and cannot be sustained for several reasons, but primarily for deviation from the limited jurisdiction exercised by the High Court under [Article 227](#) of the Constitution of India. The High Court exercising supervisory jurisdiction does not act as a court of first appeal to reappreciate, reweigh the evidence or facts upon which the determination under challenge is based. Supervisory jurisdiction is not to correct every error of fact or even a legal flaw when the final finding is justified or can be supported. The High Court is not to substitute its own decision on facts and conclusion, for that of the inferior court or tribunal.<sup>1</sup> The jurisdiction exercised is in the nature of correctional jurisdiction to set right grave dereliction of duty or flagrant abuse,<sup>1</sup>[Celina Coelho Pereira \(Ms\) and Others v. Ulhas Mahabaleshwar Kholkar and Others, \(2010\) 1 SCC](#) violation of*



*fundamental principles of law or justice. The power under [Article 227](#) is exercised sparingly in appropriate cases, like when there is no evidence at all to justify, or the finding is so perverse that no reasonable person can possibly come to such a conclusion that the court or tribunal has come to. It is axiomatic that such discretionary relief must be exercised to ensure there is no miscarriage of justice.*

16. *Explaining the scope of jurisdiction under [Article 227](#), this Court in [Estralla Rubber v. Dass Estate \(P\) Ltd.](#)<sup>2</sup> has observed:-*

*“6. The scope and ambit of exercise of power and jurisdiction by a High Court under [Article 227](#) of the Constitution of India is examined and explained in a number of decisions of this Court. The exercise of power under this article involves a duty on the High Court to keep inferior courts and tribunals within the bounds of their authority and to see that they do the duty expected or required of them in a legal manner. The High Court is not vested with any unlimited prerogative to correct all kinds of hardship or wrong decisions made within the limits of the jurisdiction of the subordinate courts or tribunals. Exercise of this power and interfering with the orders of the courts or tribunals is restricted to cases of serious dereliction of duty and flagrant violation of fundamental principles of law or justice, where if the High Court does not interfere, a grave injustice remains uncorrected. It is also well settled that the High Court while acting under this article cannot exercise its power as an appellate court or substitute its own judgment in place of that of the subordinate court to correct an error, which is not apparent on the face of the record. The High Court can set aside or ignore the findings of facts of an inferior court or tribunal, if there is no evidence at all to justify or the finding is so perverse, that no reasonable person can possibly*



*come to such a conclusion, which the court or tribunal has come to.”*

33. In view of the observations made here-in-above the present petition being devoid of any merit is ordered to be dismissed.

All pending miscellaneous application(s), if any, shall also stand disposed off, accordingly.

**(Romesh Verma)  
Judge**

March 5, 2026  
(Nisha)